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No. 82-538

In the Supreme Court of the United States

OCTOBER TERM, 1982

RALPH GODOY, a/k/a RICHARD G. WOOD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner's interests in enterprises that were acquired with racketeering profits, in violation of 18 U.S.C. 1962(a), are subject to forfeiture under 18 U.S.C. 1963(a)(1).

2. Whether either the original or the superseding indictment was invalid because fewer than 12 of the unanimous grand jurors attended all of the grand jury sessions in which evidence was presented pertaining to this investigation.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 17-29) is reported at 678 F.2d 84.

JURISDICTION

The judgment of the court of appeals was entered on May 24, 1982. A petition for rehearing was denied on July 28, 1982. The petition for a writ of certiorari was filed on September 27, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Central District of California, petitioner was convicted of eight counts of distributing methaqualone, a controlled substance, in violation of 21 U.S.C. 841(a)(1), and five counts of racketeering and conspiracy to commit racketeering offenses, in violation of 18 U.S.C. 1962(a), (c), and (d).

He was sentenced to eight years' imprisonment on one of the RICO counts, to be followed by concurrent terms of four years' imprisonment on the remaining counts. By special verdict, the jury also declared that six properties owned by petitioner were subject to forfeiture. The court of appeals affirmed in part and reversed in part (Pet. App. 17-29).

1. Petitioner owned an interest in Ralph Brothers' Market and Pharmacy, in Los Angeles, California. The evidence at trial showed that petitioner distributed large quantities of methaqualone tablets, commonly referred to as "quaaludes," through the pharmacy, which occupied a small part of the larger supermarket (Tr. 1035-1036). From the time it opened in September 1977 until December 31, 1978, the pharmacy purchased over one million quaalude tablets from legitimate drug wholesalers—a quantity of quaalude tablets approximately 500 times greater than would normally be expected from a typical pharmacy (Tr. 408-412, 415). State audits subsequently revealed that approximately 650,000 of the tablets could not be accounted for at all and that of the remaining, documented sales a large number of the prescriptions appeared to be fraudulent (Tr. 413-415). A net worth analysis of petitioner's income revealed an increase from $159,000 in October 1976 to $1,400,000 in December 1978 (Tr. 881-883). The evidence also showed that during the period when petitioner's pharmacy was selling quaaludes, large crowds of customers constantly milled throughout the supermarket, waiting for service at the pharmacy, disrupting the supermarket's normal business (Tr. 580-584, 1063). The evidence made clear, moreover, that the pharmacy's profits supported the supermarket (Tr. 740), which had been losing money before petitioner initiated his drug distribution activities (Tr. 609-610).

2. After finding petitioner guilty of the charged offenses, the jury returned a special verdict calling for the forfeiture of six parcels of land that were either interests acquired through the investment of racketeering profits, in violation of 18 U.S.C. 1962(a), or interests in enterprises conducted through racketeering activities, in violation of 18 U.S.C. 1962(c). The district court refused to order the forfeiture of two of the properties, but the court of appeals reversed the district court's decision with respect to one of those properties. The court of appeals affirmed the four remaining forfeitures.

ARGUMENT

1. Petitioner challenges (Pet. 8-13) the forfeiture of two interests in property that he acquired through the investment of racketeering profits. The first property (count eleven) was located in Van Nuys, California and housed a pharmacy and a camera repair shop, both of which affected interstate commerce. The second (count twelve), a commercial property in Mission Hills, California, was leased to six separate businesses affecting interstate commerce, including a liquor store, a television repair shop, and a small grocery store.

Petitioner maintains (Pet. 8-13) that an interest in an enterprise acquired with racketeering profits is not subject to forfeiture under 18 U.S.C. 1963(a). His argument is contrary to the plain meaning of the statutory language and Congress' clear intent and is not supported by the decision of any court of appeals.

18 U.S.C. 1963(a)(1) requires the forfeiture of "any interest * * * acquired * * * in violation of section 1962" by a person convicted of violating that provision. Under 18 U.S.C. 1962(a), it is illegal to use racketeering income "in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities

of which affect, interstate or foreign commerce." Thus, the statutory language plainly refutes petitioner's argument. See also *United States* v. *Zang*, Nos. 80-2227 and 80-2228 (10th Cir. June 7, 1982), slip op. 18-19. Moreover, it is clear that Congress intended to prevent the use of racketeering profits to acquire interests in legitimate enterprises, which would thereupon be infiltrated and corrupted. See, e.g., S. Rep. No. 91-617, 91st Cong., 1st Sess. 76-78 (1969).[1]

The decisions of other courts of appeals do not support petitioner's argument, as he suggests (Pet. 10-13). In *United States* v. *Martino*, 681 F.2d 952 (5th Cir. 1982) (en banc), petition for cert. pending sub nom. *Rusello* v. *United States*, No. 82-472, the Fifth Circuit held that racketeering proceeds acquired in violation of Section 1962(c) were forfeitable under Section 1963(a)(1) even if they were not used to acquire an interest in another enterprise. The dissent argued that conviction for a Section 1962(c) violation permitted the forfeiture only of the defendant's interest in the corruptly run enterprise and not "income or proceeds from a pattern of racketeering activity." (681 F.2d at 963). Neither the majority nor the dissent addressed the distinct question

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[1]In its statement of findings in the Organized Crime Control Act of 1970, Congress expressly found that "organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation" and that "this money and power are increasingly used to infiltrate and corrupt legitimate business * * *" (84 Stat. 922-923).

Similarly, this Court has explained that Section 1962(a) "address[es] the infiltration by organized crime of legitimate business." *United States* v. *Turkette*, 452 U.S. 576, 584 (1981). See also *id.* at 591 ("[T]he legislative history forcefully supports the view that the major purpose of Title IX is to address the infiltration of legitimate business by organized crime"). This Court did not qualify its interpretation of Section 1962(a) by requiring any other nexus between the infiltrated business and racketeering.

whether racketeering proceeds that are then invested in another business, in violation of Section 1962(a), render that acquired interest forfeitable. Similarly, the Third Circuit's footnote reference to RICO forfeiture in *United States* v. *Long*, 654 F.2d 911, 915 n.6 (3d Cir. 1981), also plainly relates to uninvested profits of a corruptly run enterprise as described in Section 1962(c). Finally, despite the misunderstanding of the dissenting judge below (see Pet. App. 25-29), the instant case does not conflict with the Ninth Circuit's own earlier decision in *United States* v. *Marubeni America Corp.*, 611 F.2d 763 (1980). That case held that proceeds derived from racketeering activity in violation of Section 1962(c) are not forfeitable under 18 U.S.C. 1963(a)(1) because they are not "interests acquired or maintained in violation of Section 1962." That decision did not reach the question whether property acquired with racketeering profits is subject to forfeiture, and the two questions are entirely separate. Even if racketeering profits are not themselves "interest[s] * * * acquired or maintained in violation of Section 1962" and thus not forfeitable under 18 U.S.C. 1963(a)(1), the use of those profits to acquire an enterprise affecting interstate commerce constitutes a separate violation of 18 U.S.C. 1962(a), and therefore an interest in the acquired enterprise is an "interest acquired * * * in violation of Section 1962". Moreover, even if the decision below conflicted with *Marubeni*, such an intra-circuit conflict is a matter for the court of appeals, not this Court, to resolve.

2. Petitioner also claims (Pet. 13-15) that the indictment was invalid because it was not returned by twelve "fully informed" jurors. The basis for his complaint is that fewer than 12 of the 17 grand jurors that unanimously returned the original and superseding indictments were present at each of the seven sessions at which evidence was presented relating to these charges. As petitioner concedes (Pet. 13),

the courts of appeals have uniformly rejected this contention; moreover, this Court has at least twice recently declined to review such decisions. See *United States* v. *Provenzano*, 688 F.2d 194, 201-202 (3d Cir. 1982); *United States* v. *Lang*, 644 F.2d 1232, 1235-1239 (7th Cir.), cert. denied, 454 U.S. 870 (1981); *United States* v. *Leverage Funding Systems, Inc.*, 637 F.2d 645, 647-648 (9th Cir. 1980); *United States* v. *Colasurdo*, 453 F.2d 585, 596 (2d Cir. 1971), cert. denied, 406 U.S. 917 (1972); *Lustiger* v. *United States*, 386 F.2d 132, 139 (9th Cir. 1967), cert. denied, 390 U.S. 951 (1968); *United States ex rel. McCann* v. *Thompson*, 144 F.2d 604, 607 (2d Cir.), cert. denied, 323 U.S. 790 (1944). See also *United States* v. *Pastor*, 419 F. Supp. 1318 (S.D.N.Y. 1975); *United States* v. *Armour & Co.*, 214 F. Supp. 123, 124 (S.D. Cal. 1963); cf. *United States* v. *Anzelmo*, 319 F. Supp. 1106, 1115 (E.D. La. 1970).

The logic of these decisions is compelling. As Judge Learned Hand explained, "[i]f what the absentees actually hear is enough to satisfy them, there would seem to be no reason why they should not vote" (*United States ex rel. McCann* v *Thompson*, *supra*, 144 F.2d at 607).[2] Jurors may review transcripts from sessions that they missed or may hear summary witnesses before they vote to indict (*United States* v. *Provenzano*, *supra*, 688 F.2d at 203; *United States* v. *Lang*, *supra*, 644 F.2d at 1238, 1239). Thus, their absence from one or more sessions does not mean that they were not "fully informed." In addition, grand jury proceedings are not adversary in nature. Thus, if a juror who does not attend a grand jury session misses

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[2]The Second Circuit has also noted that "a preliminary trial to determine * * * each juror's presence at the time when each item of evidence was introduced would bog down the courts in a morass, a veritable jungle of speculation and conjecture" (*United States* v. *Colasurdo*, *supra*, 453 F.2d at 596).

anything, he is likely to miss only additional evidence pointing to the probability of the defendant's guilt (*United States* v. *Leverage Funding Systems, Inc.*, *supra*, 637 F.2d at 648, see also *United States ex rel. McCann* v. *Thompson*, *supra*, 144 F.2d at 607). Accordingly, the court below was correct in rejecting petitioner's claim, and further review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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